

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 LESLIE E. BRAST
Deputy Attorney General
4 State Bar No. 203296
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5548
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2013-302

12 **ADAM GIBSON COVEY**
13 **2 Glen Drive**
Sausalito, CA 94965

A C C U S A T I O N

14 **Registered Nurse License No. 518000**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant), brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.

22 2. On or about December 4, 1995, the Board issued Registered Nurse License Number
23 518000 to Adam Gibson Covey (Respondent). The Registered Nurse License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on September 30,
25 2013, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Business and Professions Code (Code) section **2750** provides, in pertinent part, that
2 the Board may discipline any licensee, including a licensee holding a temporary or an inactive
3 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
4 Practice Act.

5 5. Code section **2764** provides, in pertinent part, that the expiration of a license shall not
6 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
7 to render a decision imposing discipline on the license.

8 **STATUTORY / REGULATORY PROVISIONS**

9 6. Code section **490** states:

10 “(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

14 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
15 discipline a licensee for conviction of a crime that is independent of the authority granted under
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the licensee's license was issued.

18 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
19 conviction following a plea of nolo contendere. An action that a board is permitted to take
20 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
21 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
22 made suspending the imposition of sentence, irrespective of a subsequent order under Section
23 1203.4 of the Penal Code.

24 “(d) The Legislature hereby finds and declares that the application of this section has been
25 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
26 554, and that the holding in that case has placed a significant number of statutes and regulations
27 in question, resulting in potential harm to the consumers of California from licensees who have
28 been convicted of crimes. Therefore, the Legislature finds and declares that this section

1 establishes an independent basis for a board to impose discipline upon a licensee, and that the
2 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
3 to, but rather are declaratory of, existing law.”

4 7. Code section **2761** states, in pertinent part:

5 “The board may take disciplinary action against a certified or licensed nurse or deny an
6 application for a certificate or license for any of the following:

7 “(a) Unprofessional conduct . . .

8 . . .

9 “(f) Conviction of a felony or of any offense substantially related to the qualifications,
10 functions, and duties of a registered nurse, in which event the record of the conviction shall be
11 conclusive evidence thereof.”

12 8. Code section **2762** states, in pertinent part:

13 “In addition to other acts constituting unprofessional conduct within the meaning of this
14 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
15 following:

16 . . .

17 “(b) Use any controlled substance as defined in Division 10 (commencing with Section
18 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
19 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
20 himself or herself, any other person, or the public or to the extent that such use impairs his or her
21 ability to conduct with safety to the public the practice authorized by his or her license.

22 “(c) Be convicted of a criminal offense involving the prescription, consumption, or self-
23 administration of any of the substances described in subdivisions (a) and (b) of this section, or the
24 possession of, or falsification of a record pertaining to, the substances described in subdivision (a)
25 of this section, in which event the record of the conviction is conclusive evidence thereof.”

26 9. California Code of Regulations, title 16, section **1444**, states:

27 “A conviction or act shall be considered to be substantially related to the qualifications,
28 functions or duties of a registered nurse if to a substantial degree it evidences the present or

1 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
2 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

3 “(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
4 subdivision (d) of Penal Code Section 11160.

5 “(b) Failure to comply with any mandatory reporting requirements.

6 “(c) Theft, dishonesty, fraud, or deceit.

7 “(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
8 Penal Code.”

9 **COST RECOVERY**

10 10. Code section 125.3 provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licensee found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 **FIRST CAUSE FOR DISCIPLINE**

15 (Substantially Related Crime)

16 11. Respondent is subject to disciplinary action under Code sections 490 and 2761(f) in
17 that he was convicted of a crime substantially related to the qualifications, functions, and duties of
18 a registered nurse, as follows:

19 12. On or about October 6, 2010, in Marin Superior Court case number CR171276A,
20 Respondent was convicted of having violated California Penal Code section 242 (battery).
21 Respondent was sentenced on November 17, 2010. The conviction was based on an incident on
22 July 11, 2010, during which Respondent committed battery on his domestic partner. Respondent
23 was under the influence of alcohol at the time of the incident, and this contributed to
24 Respondent's commission of the crime.

25 **SECOND CAUSE FOR DISCIPLINE**

26 (Dangerous or Injurious Use of Alcohol)

27 13. Respondent is subject to disciplinary action under Code sections 2761(a) and 2762(b)
28 for unprofessional conduct in that he used alcohol in a manner dangerous or injurious to himself

1 or others, as set forth above in paragraph 12.

2 **THIRD CAUSE FOR DISCIPLINE**

3 (Alcohol Related Conviction)

4 14. Respondent is subject to disciplinary action under Code sections 2761(a) and 2762(c)
5 for unprofessional conduct in that he was convicted of a crime involving the use of alcohol, as set
6 forth above in paragraph 12.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 518000, issued to Adam
11 Gibson Covey;
- 12 2. Ordering Adam Gibson Covey to pay the Board of Registered Nursing the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions
14 Code section 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.

16
17 DATED: October 18, 2012

18 *for* LOUISE R. BAILEY, M.ED., RN
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant
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